

Office of Chief Counsel
Internal Revenue Service
memorandum

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date: September 9, 2002

to: TED TAKEUCHI, Examination Manager (LMSB)
LARRY BENJAMIN, Examiner (LMSB)

from: KATHERINE H. ANKENY, Attorney (LMSB)

subject: **Form 872-I for [REDACTED]'s Tax Year Ending [REDACTED]**

This memorandum responds to your request for assistance in your July 15, 2002 memorandum and to your August 21, 27, and 29, 2002 electronic mail messages. This memorandum should not be cited as precedent.

ISSUE

Who should sign a consent to extend the period of limitations for [REDACTED] and subsidiaries consolidated group for the tax year ending [REDACTED]?

CONCLUSION

An authorized representative of [REDACTED], as a successor of [REDACTED], should sign the consent. Treas. Reg. § 1.1502-77A(e)(4)(ii). Although the initial Form 872 for this tax year did not expressly cover partnership items, Examination should use a Form 872-I for this consent.

FACTS

During the tax year ending December 31, [REDACTED], [REDACTED] had outstanding an average of [REDACTED] shares of common stock.

On [REDACTED], [REDACTED] merged into [REDACTED], with [REDACTED] being the surviving corporation. As a result, approximately [REDACTED] shares of [REDACTED] common shares were issued in exchange for all the outstanding shares of [REDACTED].

On [REDACTED], [REDACTED] sold the assets of [REDACTED] Inc. to [REDACTED]. [REDACTED] received an undisclosed contingent profit agreement in exchange for the assets of [REDACTED].

In [REDACTED], a representative of [REDACTED] signed a Form 872 (the "Initial Form 872") for the tax year ending [REDACTED] of [REDACTED]. The Initial Form 872 extended the period of limitations until December 31, [REDACTED]. On the Initial Form 872, the taxpayer was identified as "[REDACTED] (EIN [REDACTED]), as successor to [REDACTED] (EIN [REDACTED]) and as alternative agent to [REDACTED] (EIN [REDACTED]) and Subsidiaries Consolidated Group."

Examination confirmed with the Delaware Department of State that, by virtue of its merger into [REDACTED], [REDACTED] no longer exists and that [REDACTED] still exists. Examination also confirmed that there has been no election to designate a substitute agent for the consolidated group. Treas. Reg. §§ 1.1502-77(h)(ii), 1.1502-77A(d).

Analysis

For consolidated return years beginning before June 28, 2002, the common parent is the sole agent for each member of the consolidated group. Treas. Reg. § 1.1502-77A(a). The common parent may waive the period of limitations, and that waiver shall be considered as having also been given by each member of the group. Id.

If the common parent ceases to be the common parent, an alternative agent may waive the period of limitations on behalf of the group. Treas. Reg. § 1.1502-77A(e)(3). Under paragraph (e)(4), any one of the following corporations may act as an alternative agent for the group:

(i) The common parent of the group for all or any part of the year to which the notice or waiver applies,

(ii) A successor to the former common parent in a transaction to which § 381(a) applies,

(iii) The agent designated by the group under section 1.1502-77(d), or

(iv) If the group remains in existence under section 1.1502-75(d)(2) or (3), the common parent of the group at the time the notice is mailed or the waiver given.

Under paragraph (e)(4)(ii), [REDACTED] is an alternative agent because it was the successor to [REDACTED] in a statutory merger that qualifies as a type A or C

reorganization under section 368. Therefore, [REDACTED] may waive the period of limitations on behalf of the consolidated group.

There are no other alternative agents under paragraph (e)(4). Because [REDACTED] no longer exists, it cannot be the alternative agent under paragraph (e)(4)(i). The consolidated group has not designated an agent under paragraph (e)(4)(iii). The consolidated group did not remain in existence under paragraph (e)(4)(iv) as the result of a mere change in identity or a transfer of assets to a subsidiary. Treas. Reg. § 1.1502-75(d)(2). Nor did stockholders of [REDACTED] acquire enough stock for this acquisition to be a reverse acquisition. Treas. Reg. § 1.1502-75(d)(3).

On the Form 872-I, the taxpayer should be identified as:

[REDACTED] (EIN [REDACTED]), as successor to [REDACTED]
[REDACTED] (EIN: [REDACTED]) and as agent for the members
of [REDACTED] consolidated
group*

* This is with respect to the consolidated income tax liability of [REDACTED] consolidated group for the tax year ending [REDACTED].

Please confirm that these are the correct employee identification numbers.

The corporate signatory should be identified as:

[REDACTED]

The Form 872-I should be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other current officer of [REDACTED], duly authorized to act on its behalf. I.R.C. §§ 6061(a), 6062; Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. After the signature line, the name of the signatory and his title should be typed in.

In the transmittal letter to [REDACTED], Examination should use Form Letter 907 (DO) (Rev. 8-2000). This letter summarizes a taxpayer's right to refuse to sign a consent or to limit a consent. Section 6501(c)(4)(B) requires that "[t]he Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such

extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent."

Finally, Examination should use a Form 872-I, although the Initial Form 872 failed to expressly cover partnership items, which are expressly covered in a Form 872-I.

This memorandum may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Area Counsel
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By: _____
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